1952

File No. O.I.P.C./52

Legal Department

A BRANCH

K

Subject:— Opinions under the Indian Penal Code 1860

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File No. O.I.P.C./52

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MM

2 SC at 18-6-'52.

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BM
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SC dt. 15-6-'65.

Office of the R.J.A.

For section 224 or section 225B of the Indian Penal Code to apply it must be shown that the convict Hiralal Tejaji Kharawala, has attempted to escape from custody in which he was lawfully detained. Kharawala is not, however, under any such custody. His failure to surrender himself on the expiration of the period of his parole may, on cancellation of the order of suspension under sub-section (3) of section 401 Criminal Procedure Code, render him liable to be arrested without warrant and to be remanded to undergo the unexpired portion of the sentence. But he cannot before he is so arrested be said to be in custody in which he is lawfully detained. Therefore he cannot be prosecuted for an offence under section 224 or section 225B of the I.P.C.

P.M.Lad

e/e 11/1

Remembrancer of Legal Affairs.

U.R.to H.D. No. 314 , dated the 11th January 1963.

Submitted for approval and signature.

MM

SC dt. 10-[illegible]63.

Annexure

Office of the R.L.A.

The allegations made against Shri Shaikh, the Mamlatdar of Sidhapur, in the article in the Kannara News dated 15-6-1951 in brief are that -

(1) he carries on Pakistani administration as instanced by favouritism to one Muslim in the matter of the Hofat Gaothan area at village Mojjur

(2) in the procurement of paddy from the Muslim and Hindus of Mojjur village, he has been partial to Muslims.

(3) he is procuring by purchase almost the whole stock of rice and paddy from the villages of Bedkani leaving very little for their maintenance as instanced by the cases of Shri Venka Iro and Shri Ramdas Pai and

(4) he is taking police help in the removal of the paddy.

2. These allegations are prima facie defamatory of Shri Shaikh and a prosecution for an offence under section 500 I.P.C. will lie. In that prosecution the accused may seek protection of Exceptions 1 and 2 to section 499 I.P.C., but on the assumption that the allegations are false, Exception 1 will not apply and as the falsity of the allegations could have been easily ascertained by the accused but he does not appear to have exercised that care,

Exception 2 will also not apply. The prosecution is, therefore, likely to succeed.

P.M.Ind.
A.G.

Remembrancer of Legal Affairs

U.R. to R.D. ,No. 151 Confl. dated the 8th Februaryy 1952.

Submitted for approval and signature.

[illegible]

50 dt. 15-6-'56.

Office of the R.L.A.

Indian Penal Code, 1860.

Sections 182 and 500.

Prosecution of Dr. Solanki.

There is no objection to restrict the prosecution to one offence only andit is for the department to decide whether it is desirable to launch the prosecution under section 182 or to ask Shri Mehida to proceed against Dr. Solanke for defamation. Ordinarily between the two alternatives, the filing of a complaint under section 182 of the Indian Penal Code would have been preferable as the punishment provided under that section is imprisonment of either description whereas the punishment under section 500 of the Indian Penal Code is only simple imprisonment (Cf. R.L.A.'s opinion No. 6268 dated 13th August 1947). However, a prosecution under section 182 requires complaint in writing of the public servant concerned, or some other public servant to whom he is subordinate. The proper construction of the words k "public servant conderned" is the public servant holding for the time being the office held by the public servant to whom the false information was given (Jot Narain vs. Emp. 40 Cr. L.J. 656). Shri Mirchandani held the office of the Commissioner, N.D. when he received the false information but as the posts of Commissioners have been abolished, there is no successor who can file the complaint at present. In the circumstances, the complaint would have to be filed by some other public servant to whom the Commissioner was subordinate and a

and a complaint by a Secretary to Government to whom the Commissioner was subordinate may be sufficient for the purpose. However, the position is not free from doubt and the other course viz. action under section 499 by Shri Mehta may, therefore, be found more convenient and effective in the circumstances of this case.

P.M.Lad.

O.S. 4/2.

Remembrancer of Legal Affairs.

U.O. to R.D. No. 1858, dated the 5th February 1952.

with case pp. LMIT File 3407

MM

SC dt. 15.6.'56.

Legal Department.

The A.L.A.'s opinion No.1042 Confl., dated 14-12-51 is sufficiently clear and unequivocal. It means that if Shri Naik has ceased to be the Presidents, no sanction under section 197 Criminal Procedure Code is necessary, and if the prosecution is to be confined to an offence under section 409 I.P.C. then no sanction isnecessary even if he has not ceased to be the Presedent.

As regards Shri Logu the Chief Officer of the Municipality, the Department is requested to state -

(1) whether he still continues to be the Chief Officer,

(2) whether heis not removable from his office save by or with the sanction of the State Government,

(3) for what offences he is proposed to be p prosecuted,

It may be pointed out that he was on leave and Shri G.V. Marathe was acting in his place at the time the alleged criminal misappropriation took place. The evidence does not show that he was a party to the withdrawal of the money from the Bank or to its subsequent misuse. All that is alleged against him is that he was grossly negligent in not detecting the withdrawal when he subsequently resumed duties. The facts disclosed are not sufficient to justify his prosecution for abetment of the offence under section 409 I.P.C.

Contd.

[redacted]

39/1.

O.O.

Additional Secretary to Government.

U.R. to L.S.G. & P.H.D., No. 119-Confl ,
dated the 29th January 1952.

Submitted for approval and signature.

[redacted]

50 dt. 15-6-'56.

Office of the A.J.A.

These papers are referred to A.J.A. with a request to advise whether a successful prosecution can be had in this case against those persons who now admit to have made false statements before the Collector and the Mahalkari.

2. The person who admits to have made false statements before the Mahalkari is Shri Mavji Ramji. As back been observed in the Revenue Department note itself, it is possible that this witness has been won over by one or the other of the officers and that is why hois going back over his previous statements. But that consideration apart, it is apparent that the main witness in this case the person who alleges that he gav the bribe— sticks to his story and his story is ~~xx~~ corroborated by two other witnesses. It is not unlikely that Shri Mavji Ramji in making his statement about the bribe before the Mahalkari may have acted on the belief that what Shri Govind Kalyan and the other two witnesses were telling was the truth. In these circumstances, a prosecution of Shri Mavji Ramji for an offence under section 193 I.P.C. is not likely to succeed.

3. The Collector has suggested the prosecution of the applicant namely, Shri Govind Kalyan, and his two witnesses meaning Shri Vashram Jerma and Shri Vamnale Kalyan. The Prant Officer has disbelieved these two witnesses on the ground of

discrepancies on such points as the number of notes given, the exact place where they were given, the fact whether all of them were given to the Circle Officer or whether Rs.101/- were given to the Officer and Rs.25/- to the Talathi. The Prant Officer has found that the allegations mg against the Talathi were not baseless. In view of these facts and findings a prosecution of Shri Govind Kalyan andhis two witnesses namely, Shriyuts Vashram Jerma and Vanmali Kalyan, for an offence under section182 of the Indian Penal Code has not much chance of success.

P.M.Lad

o.o. 1/2

Remembrancer of Legal Affairs.

U.O. to H.D. No. 139- Conf., dated the 1st Februanary 1952.

Subd. for signature.

MM

SC dated 15-6-'50.

Office of the R.L.A.

The principal offence is of criminal breach of trust. The alleged forgery of the receipt of Rs. 137-10-0 was meant either to facilitate the misappropriation of the amount or (more probably) to cover up a misappropriation already made and is only one of the circumstances in proof of the offence of criminal breach of trust. Shri Sirsat on whose testimony alone the charge of forgery rests will have to be examined by the prosecution in proof of the charge of criminal breach of trust. So long as the prosecution makes it clear in presenting evidence that the receipt is not a genuine document it would not be necessary to add charges under sections 467 and 471 I.P.C., and no adverse inference can be drawn against the prosecution for not adding specific charges under sections 467 and 471 I.P.C.

P.M.Ind.

S.S. 12/2

Remembrancer of Legal Affairs.

U.O.to A. & P.D., No. 171-Conf., dated the 13th February 1952.

Submitted for ~~signature~~ approval and signature.

MM

SC dt. 15-6-'56.

LEGAL DEPARTMENT.

As pointed out by the R.L.A. in his opinion No. 606-Confl., dated 13th August 1951, the offence committed by the accused in this case is punishable under section 463 of the Indian Penal Code. That offence is not compoundable and as the police have investigated it under the order of a Magistrate they will bebound to submit their report under section 173 of the Criminal Procedure Code as soon as the investigation is completed. However, as the accused have expressed regrets and have agreed not to use the opinion of the Director of Public Health in their future advertisements, no useful purpose is likely to be served by going on with the prosecution. The Public Prosecutor may, therefore, be directed to explain the facts to the Court and with the consent of the Court do withdraw from the prosecution under the provisions of section 494 of the Criminal Procedure Code as soon as the Magistrate takes cognisance of the case under section 190 of the Criminal Procedure Code.

20/3

S.S.

Additional Secretary to Government.

H.M.(Health)

Subd. for signature.

MM

SC dt. 15-6-'56.

Office of the R.L.A.

Section 337 of the Indian Penal Code will apply in a case where the act is rash or negligent. Culpable rashness is acting with the consciousness that the mischievous and illegal consequences may follow; but with the hope that they will not; and culpable negligence is acting without the consciousness that the illegal and mischievous effect will follow, but in circumstances which show that the actor has not exercised the caution incumbent upon him. In this particular case stones were definitely aimed at human beings, and the intention of that act and most certainly the knowledge of that act was that hurt would be caused. Such intention orknowledge is something more than mere cautiousness which amounts to rashness or negligence, and, therefore, the proper section to apply in this case would be section 323. The expression "any person" used in that section need not be restricted to the particular person to whom hurt is actually caused. If authority were needed for the above view, it will be found in the case of Babu Ram v. Emperor (26 Cr. L.J.967).

P.M.Lad

28/4

D.C.

Remembrancer of Legal Affairs.

U.R. to H.D. No. 0656., dated the 29th April 1952.

D.S. (Cr.Law)

R.L.A. Please carry out the corrections in the fair

Office of the R.L.A.

'Attention is invited to R.L.A.'s opinion No. 196 dated the 19th February 1952. The scurrilous character of any writing must naturally depend upon the style and the manner of the w riting. The fact that the object of the article falls within the scope oflegitimate comment on a topic of public importance cannot serve as an excuse for scurrilous writing. Comment even on a constitutional issue can be scurrilous. The tenor of the writing and theparticular expressions used therein, e-g-the pun on the word Suravat the Surat Halava being thrown into the latrines of Sulsar, the epithet marudhama, are sufficient for holding the writing prima facia scurrilous. However, it is a matter for consideration whether it would be expedient to commence proceedings under the Act in this particular instance. For a test case, it wouldbe desirable to select a more glaring example of scurrilous writing.

Put up

o/o, 20/5

Remembrancer of Legal Affairs.

R.R. to H.D. No. 8438 , dated the 20th May 1952.

with copy of the Article.

Subd. for signature.

MR

SC dt. 15-2-'52.

Office of the R.D.A.

All the speakers have stressed in their respective speeches the need for unity and for organisational strength amongst workers. They have pointed out how by such unity and strength they were successful in strikes and in legal proceedings etc. Shri Sule after stressing the advantages of unity and o organisational strength refers to the move of the millowners to close the mills on account of the slump and states: "If hereafter the owners look up their mills we should on the strength of unity b break it, take the mill into our control make it of the ownership of the labourers and drive away those owners from there." These statements should be read in reference to the context and in the light of the trend of the speeches as a whole. If so read, they cannot be construed as advocating violent methods but as pointing out that by reason of unity and s strength the workers could prevent closure of the mills and could even become owners of the undertaking. The speech read as a whole is therefore not actionable.

F.M.Lad.

o/c 23/5

Remembrancer of Legal Affairs.

U.O. To H.D. No. 409-Confl. dated the 24th May 1952.

MM
SC dt. 15-6-'52.

office of the B.I.A.

There were two applications against Shri V.B. Deshpande, Mamlatdar of Chandor. In one of the applications dated the 28th March 1961, the signatories to the ~~the~~ application made two broad allegations against the Mamlatdar that he was not impartial in the discharge of his duties being partial towards brahmins and indifferent as well as discourteous towards non-brahmins and particularly harijans; and that he was not honest in his administration.

2. In support of the first allegation instances about which evidence was adduced at the enquiry, related to the passing of orders in tenancy and other similar cases; treatment of non-brahmin subordinates under him in the matter of casual leave and recommendations for promotion and otherwise; treatment of his harijan peons; treatment of some of the non-brahmin members of the public such as Shri D.A.Patil and Shri G.S.Kheldari; and the attempt to absolve from responsibility a brahmin Talathi of village Talegaon Roha of misappropriation of Government money. Most of these allegations have been found to be substantially true, the only allegation not found to be true being about the alleged partiality in the passing of the orders in Tenancy cases.

3. In support of the second allegation instances about which evidence was adduced at the enquiry related to the engagement of bullock-carts through Talathis for travel and not paying for them; the making of false entries of halts in his diary and issuing of false certificates of residence to

certain brahmin Talathis. These allegations have all been substantially found to be true.

4. In the second application dated the 9th January 1952 one Dr. (Mrs.) Sitabai Sonnath Gaikwad alleged that Shri Deshpande (1) had called her to his house at night apparently with the intention to misbehave with her; (2) had dismissed her case pending before him as she did not respond to his call; and (3) has in his house a woman who is not his wife. In respect of this application and the allegations made therein, the Enquiry Officer has reported that the allegations were false and the applicant should be prosecuted for giving false information (section 182 I.P.C.). The R.L.A. is requested to advise.

5. Of the 3 allegations made in the application of Mrs. Sitabai Gaikwad no enquiry has been made regarding the third allegation and the reason given is that the applicant herself admitted that what she had stated was hearsay. The Enquiry Officer has not stated that the said allegation is false. As a matter of fact the Enquiry Officer has not even cared to ask the Mamlatdar as to what he had to say about it, nor has the Mamlatdar cared to reply to it, although two of the peons working with the Mamlatdar have, according to the Enquiry Officer stated before him that the woman living with the Mamlatdar "appeared like a married woman". The actual words used by one of the peons are "it does not appear that Saheb has kept the

the woman. Baoendib has four children by his first wife." And the words used by the second peon are, "the woman at the house of the Baoendib appears like a married woman. She is not like a kept woman." These non-committal answers of the two peons read in the light of the absence of any specific examination of and the denial by the Mudaliar on the point goes to show that the allegation cannot be said to be false. As already pointed out it has not been held to be false by the Enquiry Officer himself.

6. In respect of the first allegation Mrs. Sitabai Gaikwad besides examining herself produced 3 witnesses one of whom was the former peon, and the other two were patients who were present in her dispensary at the time the said peon is alleged to have gone there to call her at about 9-30 p.m. to the Mudaliar's house. The Enquiry Officer has, in view of certain discrepancies in the statements of these witnesses and other considerations, come to the conclusionthat the witnesses cannot be said to be reliable. The discrepancies relied on relate to such points as whether the night was dark or bright, what was the position of the bench and the chair in the dispensary, and what was the date of the occurrence. The Enquiry Officer has also relied on the fact that the witnesses did not personally know the peon who had come to call Mrs. Sitabai, and they did not speak about this incident to others in the days that followed. On these considerations he has come to the conclusion that the evidence of

of these ~~xxxix~~ witnesses was not reliable andconcluded that "Besides this, the applicant did not lead any evidence to prove the allegations and the charge (a) cannot be said to have been proved." In the circumstances, it cannot be said that the allegation had that quality of falsity which would invite section 182 I.P.C.

7. The second allegation contains a statement of fact when it states that her case was dismissed. The Enquiry Officer's report says that the Mamlatdar was indiscreet in the manner he had treated the case and, particularly in the manner in which he issued a search warrant against Mrs. Sitabai Gaikwad under section 96 of the Criminal Procedure Code. It would appear that he was not only indiscreet in the matter of the search warrant but was moreover really going behind the orders of the Sessions Court in relation to the property for which the search warrant was issued. It may be that the reason given by Mrs. Sitabai Gaikwad for the unusual orders of the Mamlatdar may not be true, but it would not be surprising if she believed that the reason which she gave was probably the true reason.

8. On the facts, therefore, this is not a fit case for the prosecution of Mrs. Sitabai for an offence under section 182 Indian Penal Code.

P.M.Lad.

c/o.

Remembrancer of Legal Affairs.

U.S. to P.S.O.No.8089 dated the 24th May 1962.

MM 50 65. 15-6-150.

Action of the R.L.A.

The R.L.A. is requested to advise whether the following three stories appearing in the issue of 'Manik' for the month of December 1951 are to be obscene. The stories in question are:

(1) For having a child,
(2) Try to implement,
(3) Widnip's love story.

The first story depicts two couples who are childless and in order to have a child the ladies are shown as consenting to have intercourse with the husband of the other lady. The theme that is tried to be preached in the story is that it is not sinful to have such immoral intercourse with another person for the sake of a child. The story would contains descriptions of amorous acts. In the second story is painted a young girl who is addicted to having love play with persons of her sex. To cure her of this habit, a lady doctor advises her to have intercourse with a boy-friend whom she ultimately marries. The third article contains the story of a man who finding that his friend is indulging in immoral acts with his own own wife, takes revenge by taking the same advantage with the friend's wife. Both the above stories contain descriptions of amorous acts in their usual style that is adopted in these publications.

2. The tendency and aim of the first and third

stories is to make light of morality and to propagate vicious ideas of immoral behaviour. The preaching of immorality and making light of established moral code coupled with copious descriptions of amorous acts which are inserted for no other reason but to arouse libidinous thoughts in the minds of the readers which these stories contain are sufficient to bring these articles within the mischief of section 292 of the I.P.C. Having regard to the general standard and nature of the publication, it can be easily shown that the intention of the stories is not to investigate any sociological or psychological problem, but to present to the readers cheap literature containing material calculated to arouse sexual passions. In these circumstances, the Publication is such as would tend to corrupt and the minds of those into whose hands it would fall and therefore it clearly falls within the mischief of section 292, Indian Penal Code. The second story is not actionable under section 292, Indian Penal Code.

P.M.Ind.

S/C.

S.C.

Remembrancer of Legal Affairs.

U.O.to H.D. No. 806-Confl. dated the 3rd June 1953.

Subd. for signature.

MS

SC dt 15-6-'86.

OFFICE OF THE R.L.A.

The question for R.L.A.'s consideration is whether the stories (1) Manjrina Vachavile (2) Niyog and (3) Vasanachi Goshta appearing in the issue of Mauti for January 1952 are obscene.

2. Read as a whole the first and the last stories do not appear to be obscene. They do contain passages which are in bad taste but they would not be sufficient to bring the stories within the mischief of section 292 of the Indian Penal Code. The second story, viz. Niyog, however, appears to be obscene. The story centres round a young woman who finding her husband impotent makes overtures to a young Ayurvedic doctor and has intercourse with him. The description of procreation acts which this story contains may not by themselves be considered to be of a highly objectionable type but read along with the theme and handling of the story and having regard to the fact that the magazine is consistently printing the circulating such stories, which are calculated to lower morals, there would be no objection to hold the story as obscene.

P.M.Lad.
S.S. 2/6

Remembrancer of Legal Affairs.

U.D. to H.D.No. 507-Confl. dated the 3rd June 1952.

Subd for signature.
MM 5C dt. 15-6-'56.

Office of the R.L.A.

The immediate cause for the article was the All Prophets Day observed in Bombay. Its appears from the article that the Ahmedias (Qadianis) were the prime movers of that meeting. This suggestion of the writer is not denied in the letter dated 28-8-52 of Hakim Bahauddin the Missionary in-Charge of the Ahmedia Community. The writer of the article analyses the programme of that meeting from the Muslim point of view and points out that it is intended to belittle the position of the Prophet in comparison with Mirza Gulam Ahmed the founder of the Ahmedia Sect. The writer also refers to the provocation given by the Qadianis to Muslims in Karachi which resulted in riots. The writer then calls upon the Qadianis to leave the Muslims alone. No doubt the writer states that Mirza Gulam Ahmed is dust (earth) as compared to the sky which is prophet Mohmed and that the Qadiani religious challenge to Islam will remain till silence is forced on the voice of the Qadiani religion but these sentiments must be read in the light of the alleged provocations above referred to. If so read, they would not be held to be likely to promote feelings of enmity or hatred between differenct sections of the people of India.

PM.Ind.

Remembrancer of Legal Affairs.

U.O. to H.D., No. 12767 dt. the 1st August 1952.
MM SC dt. 15-6-'56.

Office of the D.I.A.

The speeches of Shri V.R.Patil delivered on 20.5.1953 and 25.5.1952 are not actionable.

2. The main question for consideration is whether the speech of Shri Patil delivered on 20.5.1952 is actionable inasmuch as it tends to excite hatred between Hindus and Muslims. The burden of the whole speech delivered by Shri Patil is to warn the Muslims against their seducing the Hindu girls and marrying them, as such marriages would no longer be tolerated and that even in case any such marriages are attempted by the Muslims even though the Hindu girls are willing, the Hindus as a whole would rushe to prevent them. The main reason adduced by the speaker against such marriages is that the Muslims in the past increased their population by such marriages and by bringing up as Muslims the children born of illegitimate connections whereby they could lay a claim for partitioning India and consequently, if they are so allowed in future to increase their population by such marriages, they might repeat a similar claim and thus endanger the intergrity of India. In the course of developing this theme, he has touched some controversial matters such as playing of music in the streets, cow slaughter and removal of Muslim tombs. In dealing with them, he has adduced reasons which are not couched in provocative language. One point he has stressed throughout his speech is that it would not be possible to believe that the Muslims would re-

Contd.

remain loyal to India. This kind of accusation has now become a part and parcel of the vocabulary of political demagogues and should no longer excite any kind of hatred between the two communities; and applying the principle stated in Fakhrul Islam v. Emperor (1943 Allahabad Law Journal 168), it would not be actionable. He has also said in his speech that the Muslim culture shouldd no longer survive in India; but in what sense and for what purpose he said so is not clear, and stray sentences of this kind cannot be taken into account for judging the effect of a speech which has to be read as a whole. In these circumstances the speech of Shri V.K.Patil does not appear actionable.

P.M.Lad,
S/9.
9.9.

Remembrancer of Legal Affairs.

U.O. to H.D. No. 888-Conf. 6th September 1953.

Submitted for ~~[illegible]~~ issue.

2. File in O.I.P.C/52.

SC dt. 15-6-'56.

Office of the R.L.A.

The judgment of the Magistrate is correct. For the prosecution to succeed in proving the offence of cheating it must be shown that the person at whose instance the complaint was filed was deceived and that he was fraudulently or dishonestly induced to deliver any property. In the case in question the se ingredients could have been established by proving that (1) the purchaser wanted and asked for pure ghee, (2) the shopkeeper sold the ghee to him as pure ghee, (3) the purchaser believed that what he was getting was pure ghee and (4) the shop-keeper knew or had reason to believe that it was not pure ghee.

In case where the accused is being prosecuted on the basis of a sample obtained by the Inspector the above ingredients of the offence will be difficult to establish. The R.L.A.would suggest that instead of this roundabout and difficult method of bringing an offender to book by a prosecution under the Indian Penal Code, the Bombay Prevention of Adultration Act may be extended to the areas where the evil of adulteration is widespread and prosecution be launched under that Act.

P.M.Lad.
e.c. 11/9

Remembrancer of Legal Affairs.

U.O. to L.S.G. & P.H.D. No. 14911-A dated 12th September 1953.
MM 56 dt. 10-6-'56.

Legal Department.

Even on the additional information supplied by the applicant Shri Ardeshir R.Shbedar, the decision of the H.S.A. dated 7th January 1952 does not need to be revised.

2. The applicant who claims to be the legal heir to a part of the estate of his late brother Jehangir R. Subedar who died in May 1939 alleges three distinct offences. They are:-

(1) that his nephew Shri Kaikhushroo Sorabji Subedar (proposed accused No. 1) manipulated the books of accounts of the partnership firm of S.R.Shbedar and sons with a view to show that the deceased Jehangir R. Subedar was a debtor to the firm and not a creditor. It is not clearly stated when this was done but the suggestion appears to be that it was done soon after Jehangir's death in May 1939.

(2) that in 1936 Shri Kaikhusroo S. Subedar and Shri Manekji Marwanji Patel (proposed accused Nos. 1 and 2) got a fraudulent will made by Bai Rachubai widow of Jehangir R. Subedar. In this those two are alleged to have been abetted by certain Solicitors and others.

(3) that in July 1951 the aforesaid two persons and Shri Jamshed Sorabji Dadiburjor (proposed accused No. 3) fraudulently got certain documents signed by Bai Rachubai when she was in the hospital. It is alleged that the nurses and other staff of the

hospital abetted them. It is not stated what the document are.

It will be seen that these are distinct offences committed at different periods of time and unconnected with each other. The parties to the offences are also not the same. The allegations do not disclose a single conspiracy between the three accused embracing these three offences. Each offence must, therefore, be considered separately. As for the first offence accused No. 1 being the only party he can be prosecuted for it and no charge of conspiracy is necessary or legally permissible. As for the second offence it is alleged to be a completed offence where parties are said to have abetted each other. If so a charge for conspiracy is not necessary or proper. The Will does not appear to have been challenged by Bai Bachubai upto her death in August 1951. Besides, the question whether that will is genuine or not is of issue in probate proceedings pending in the High Court wherein the applicant Ardeshir as a executor has already challenged the genuineness of the Will and alleged it to be not merely fraudulent but also a forgery. As for the third offence, there are no details of the alleged documents.

This is, therefore, not a fit and proper case for grant of sanction under section 196A Criminal Procedure Code.

11/10.

Additional Secretary to Government,

U.R. to H.D.No. 16021/A dt. the 13th October 1953.

MM 50 dt 16-6-'56.

Office of the R.L.A.

The play by "Mohammad Paigambar" by Shri B.L. Umarvadia (deceased) introduces into the Prophet's life an imaginary love episode with a girl named Hamida and in presenting the various aspects of that love episode, the Phophet's character and the character of the Prophet's wife Khadija are sullied. Mohammad is presented as carrying on a physical love play with Hamida and uttering sentiments and opinions unworthy of the high esteed in which he is held by the Muslims . Khadije, the first lady of Islam, is shown as a mean scheming woman and her presentation in the play is bound to wound the feelings of Muslims. The play did outrage the religious feelings of the Muslims as evedenced by the agitation carried on at the time resulting in the confiscation of the copies by the Government. It will still outrage the religious feelings of the Muslims. The preface to the play shows that the writer knew that the whole episode was imaginary and was likely to lower the character of the Prophet. Considering all these facts the publication of the play will invite section 295A of the Indian Penal Code and action under section 99A(1) of the Criminal Procedure Code. H.D.viewis correct.

P.M.Lad.
20/10

O.C.

Remembrancer of Legal Affairs.

U.R. to H.D. No. 17362/A, dated the 31st October 1962.

MM

Office of the R.L.A.

Action under the Press (Objectionable Matter) Act, 1951, is not feasible. Clause (vi) of section 3 of the Act, which is relevant covers articles ~~xx~~ which are "grossly indecent, or are scurrilous or obscene or intended for blackmail". There is nothing indecent or obscene in the contents of the article or in the language used. Scurrilousness implies abusiveness of a type the licence of a baffon can warrant. The article is not abusive. Blackmail implies an attempt to extort money or other valuable thing by threats of libel, prosecution, exposure or bodily harm. There is no attempt at blackmail in this article.

The article is however defamatory and an action against the writer under section 500 I.P.C. would lie. The writer can also be prosecuted for an offence under section 182, I.P.C.

P.M.Lad.
21/10

Remembrancer of Legal Affairs.

U.O. to P.A S.D. No.11136-Confl. dated the 22nd October 1952.

Submitted for signature.

R.L.A.

MM 50 dt. 16-C-1952.

OPINION OF THE D.L.A.

The mere fact that accused were prosecuted, tried and convicted for an offence under section 500 of the Indian Penal Code, will not make their subsequent prosecution for an offence under section 182 or section 211 of the Indian Penal Code incompetent. But on the facts of this case a prosecution under section 211 will not lie and a prosecution under section 182 is not advisable. The complaint made by the six ladies to the Minister against the applicant Shri David Fernandes did not amount to institution of a criminal proceeding or to charging a person falsely with having committed an offence. Section 211 would not, therefore, apply. The false statement made by them to the effect that the applicant was in David Sassoon Reformatory School for 10 years would having regard to the intention behind it, no doubt invite section 182 of the Indian Penal Code, but having regard to the fact that for this very statement they have been convicted and sentenced for an offence under section 500 of the Indian Penal Code, it is not advisable to prosecute them in respect of that statement under section 182.

P.M.Nad
6/11

-Remembrancer of Legal Affairs.

U.R. to H.D. No.184698A, dated the 6th November 195
88 dt. 16-6-'56.

OFFICE OF THE R.L.A.

By Government letter P.W.D. No. MS 121/113 780.L, dated 2nd February 1953, Government called upon Messrs. Honesty Metal Works to apply in the prescribed form for transfer of the load to their name. In pursuance of this, the party submitted an application requesting a separate meter for 1½ H.P.(p.69). There was no categorical statement on the part of the applicants that they were consuming the whole of this load previously or that it was not shared by them with any other party. In the circumstances, what the party has done is to suppress the true facts. This is also the view taken by the P.W.D. in their letter No.MS.121/70826 L, dated the 15th September 1953, wherein they have called upon the applicants to show cause why action for supression should not be taken. Withholding of information as distinct from the actual giving of false information is not within the scope of section 182 of the Indian Penal Code (see Sher Mohammad, 1940, Lah. 396), and no prosecution would be possible under section 183 of the Indian Penal Code.

P.M.Lad.
27/11

Remembrancer of Legal Affairs.

U.O. to P.W.D.No. 19075/A dt. the 28th November 1953.

Subd. for signature.
MM 30 dt.16-6-'54.

Office of the R.L.A.

The allegation of Shri Jadhavlal Painter was that the Treasury Aval Karkun Shri Foujmal Kodarmal Gandhi had in the night of 7-5-52 surreptitiously andillegally brought into the village of Danta about 20 maunds of wheat from outside the village and had thereby indulged in black marketing activity and committed an offence relating to foodgrains. This allegation was first made in a complaint made b by him to the Sub-Inspector of Police, Danta in the morning of 8-5-52. Immediately on receipt of the complaint the Sub-Inspector searched the house of Shri F.K.Gandhe. In that search only 2 mds. and 5Kers. (Khoba) were found from his house. This quantity was within the quantity he was entitled to hold according to the ration card units held by him for his family. Shri Jadvalal then made and application the Mamlatdar on the same day alleging t that the remaining quantity out of the alleged 20 mds. has been removed by Shri Gandhi to the houses of the neighbours and he gave the names of those houses. Accordingly those houses were also se searched on the evening of the 8th and on the ninth but beyond very meagre quantities of wheat nothing was found. Shri Jadavlal did not adduce any indep- endent evidence in sup ort of his allegations and when he found that his allegations were not sus- tantiated he began to make allegations that the searches that had been carried out were suspicious and the police and the revenue officers had tried to hush

Contd.

up the matter. Subsequently, Shri Jadevlal has withdrawn all his allegations and has stated that he had made allegations only on thebasis of information. He thereby suggests that he had no personal knowledge, a suggestion which is contrary to thedefinite allegations made in his various applications of his having personally seen the wheat being moved by named persons. He does not say from whom he received the alleged information. On

On these facts there is a prima facie case against Shri Jadevlal for an offence under Para.1 of sec. 211 of the Indian Penal Code. Action under sec. 211, para.1 would be more appropriate than under sec. 182 I.P.C. (see Emperor vs. Ehrsan Jeson 43 Bom. L.R. 858 and Emperor vs. Arya Patoba Munde 15 Bom. L.R. 574).

P.M.Lad.
29/12.

Remembrancer oflegal Affairs.

U.R. to R.D., No. 1453/AConfl., dated the 29th December 1952.

Submitted for signature.

D.S. (.L)

R.L.A.

MM

Sedt. 16-6-'56.

Office of the R.L.A.

It cannot be said that there is no evidence in support of the allegations regarding the loan of Rs.25/- and the purchase of Rs. 20-9-0-. There is evidence both documentary and oral in support of the allegation. The documentary evidence is the account books of the applicant. The oral evidence is that of the applicant and two witnesses. The inquiry office rejects this evidence on the ground that it is not independent and does not inspire confidence. This is not enough to sustain successfully a charge of giving false information under section 182, I.P.C. The matter itself is also hot not sufficently important to justify a prosecution.

P.M.Iad.
24/12.
Remembrancer of Legal Affairs.

U.O. TO H.O. No. 21846[A] dated the 26th December 1953.

with one batch of M

Submitted for signature.

D.S

R.L.A.

M/

S SC dt. 10-6-'56.